No. 80-904

MAR
ALEXANDER
CLER

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1980

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

DOROTHY MAE HALL,
Respondent.

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

THE DECISION BELOW IS BASED UPON THE FEDERAL CONSTITUTION

Respondent seeks refuge in the independent state ground doctrine. He urges that the decision below is irreviewable in federal court because California has its own exclusionary rule, based upon state law decisions and state statutes. See Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945). More than

resting their decisions in whole or in part upon state law, insultated themselves from federal review. This is not such a case. The decision below does not mention the California Constitution. Not one word of the state court decisions cited below invoke the state constitution or state exclusionary rule. The decision below does not mention California Penal Code section 1538.5, much less construe it as a statutory exclusionary rule. "Nor is there such an absolute statutory right. Penal Code section 1538.5 is directed only toward implementation of such Fourth Amendment rights of an accused as he may have." People v. Newell, 93 Cal.App.3d 29, 36, 155 Cal. Rptr. 430, 432 (1979).

Nothing in the opinion below encourages the belief that the state court imposed more exacting standards than those demanded by the Fourth

Amendment. Instead, the opinion rests upon this Court's decisions in Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S.410 (1969), and upon two state court decisions which faithfully apply the guidance furnished in Aguilar and Spinelli. People v. Hamilton, 71 Cal.2d 176, 77 Cal. Rptr. 785 (1969); People v. Schmidt, 102 Cal.App.3d 172, 162 Cal. Rptr. 171 (1980).

The state appellate court excluded evidence obtained by a warrant search in the belief that suppression was required by the decisions of this Court. That the state court could have reached its decision under state law does not supply an independent basis for its decision. Otherwise state court opinions interpreting the federal Constitution would be illusions.

CONCLUSION

For the stated reasons, petitioner respectfully urges that the petition for writ of certiorari be granted.

DATED: March 25, 1981

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